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TROJAN CAPITAL INVESTMENTS, LLC and  
9 Defendant TRINITY FINANCIAL SERVICES,  
LLC  
10

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA  
13

14 RODNEY MOTT,

15 Plaintiff,

16 v.

17 THE PNC FINANCIAL SERVICES  
GROUP, INC; SELECT PORTFOLIO  
18 SERVICING, INC; TRINITY  
FINANCIAL SERVICES, LLC; TROJAN  
19 CAPITAL INVESTMENTS, LLC,  
RADIAN SERVICES, LLC; and SPECIAL  
20 DEFAULT SERVICES, INC.

21 Defendants.

22 TROJAN CAPITAL INVESTMENTS,  
LLC,

23 Counterclaimant,  
24

25 v.

26 RODNEY MOTT; RADIAN SERVICES,  
LLC; PNC BANK, N.A.; THE PNC  
FINANCIAL SERVICES GROUP, INC.  
27 BANK OF AMERICA, N.A.; SELECT  
PORTFOLIO SERVICING, INC.;  
28 WILMINGTON TRUST, NATIONAL

Case No. 2:16-cv-01949-JCM-CWH

**MOTION TO EXPAND TIME FOR  
SERVICE**

1 ASSOCIATION, not in its individual  
2 capacity but solely as trustee under the  
3 Greenwich Investors XL Pass-Through  
4 Trust Agreement; DTA SOLUTIONS  
5 LLC; BSI FINANCIAL SERVICES INC.;  
6 DREAMBUILDER INVESTMENTS  
7 LLC; LAND HOME FINANCIAL  
8 SERVICES, INC.; TRINITY FINANCIAL  
9 SERVICES, LLC; and Also all other  
persons unknown claiming any right, title,  
estate, lien or interest in the real property  
described in the counterclaim adverse to  
counterclaimant's ownership in the  
referenced lien and note stated herein, or  
any cloud upon counterclaimant's title to  
the referenced lien and note herein  
inclusive,

10 Counterdefendants.

11  
12 COMES NOW, Defendant and Counterclaimant, TROJAN CAPITAL INVESTMENTS,  
13 LLC ("Trojan"), by and through its attorneys, Richard Reynolds of BURKE, WILLIAMS &  
14 SORENSEN, LLP, and hereby moves this Honorable Court for an Order Expanding Time for  
15 Service of Process and Granting Leave for Service of ninety ("90") days as to  
16 DREAMBUILDER INVESTMENTS LLC, a New York Limited Liability Company.

17 This Motion is made and based upon the attached Memorandum of Points and Authorities,  
18 the attached declaration and exhibits, the papers and pleadings on file herein, and any oral  
19 argument that this Honorable Court may entertain at the time of hearing of this Motion.

20 Dated: June 9, 2017

BURKE, WILLIAMS & SORENSEN, LLP

21  
22 By: /s/ Richard J. Reynolds  
23 Richard J. Reynolds

24 Michael R. Brooks  
25 BROOKS HUBLEY, LLP  
1645 Village Center Circle, Suite 60  
Law Vegas, NV 89134

26 Attorneys for Defendants TROJAN  
27 CAPITAL INVESTMENTS, LLC and  
28 TRINITY FINANCIAL SERVICES, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF RELEVANT FACTS

3 Plaintiff's first amended and supplemental complaint ("FAC") pleads various counts  
4 including violation of the Federal Debt Collection Practices Act, Declaratory Relief regarding  
5 alleged unenforceability of the subject loan note, breach of an alleged accord to forgive the debt,  
6 declaratory relief regarding alleged inability to foreclose, unjust enrichment, civil conspiracy,  
7 and misrepresentation as to the alleged forgiveness of the debt. The claims are related to real  
8 property commonly known as 609 Verde Vista Place, Las Vegas, Nevada 89145 (the "Property").

9 TROJAN CAPITAL INVESTMENTS, LLC ("Trojan") filed its Amended Answer to the  
10 FAC and pleaded counterclaims ("Counterclaims") therein of quiet title and declaratory relief on  
11 March 13, 2017 against the parties listed above. The counterclaim seeks to quiet title to the deed  
12 of trust in favor Trojan and the declaratory relief claim seeks a finding that Trojan is the owner in  
13 possession of the original note which is secured by the deed of trust recorded referencing the  
14 original note and that Trojan is the owner and trust deed beneficiary of that deed of trust. The  
15 Counterdefendants are necessary parties because Trojan seeks to exclude them from any interest  
16 in the subject Deed of Trust and Note as well to remove all impediments created with respect to  
17 those documents.

18 All of the Counterdefendants to the Counterclaims have been served except for  
19 Counterdefendant DREAMBUILDER INVESTMENTS LLC ("Dreambuilder"). To date,  
20 although Trojan "served" Dreambuilder, it appears to have been unable to do so properly as  
21 discussed in further detail below.

22 On April 3, 2017, Trojan's process server appeared at the corporate office of  
23 Dreambuilder, and served an unnamed person who appeared to be a Dreambuilder representative,  
24 but the process server does not appear to have successfully served an, "officer, a managing or  
25 general agent, or...other agent authorized by appointment or by law to receive service of  
26 process." Federal Rules of Civil Procedure, Rule 4(h). It also appears there was no confirmation  
27 the person served was authorized by appointment or law to receive service of the summons and  
28 complaint.

1 Given the number of Counterdefendants served and a proof of service from the process  
2 server very late of “service” on Dreambuilder, this apparent error in service was not discovered  
3 until the week of June 5, 2017, when the process server sent the proof of service to counsel for  
4 Trojan and Trojan’s counsel had the opportunity to review it. Service by the process server was  
5 confirmed but because a proof of service was provided late by the process server, Trojan now  
6 needs to expand time for service for 90 days for personal service or another method allowed on  
7 business entities by the States of New York or Nevada.

8 A Proof of Service of Summons on Dreambuilder is on file (Doc. 68), and Trojan seeks to  
9 expand the time for service for 90 days to file an Amended Proof of Service reflecting proper  
10 service on Dreambuilder. Trojan anticipates service will occur well before the time requested in  
11 that if Dreambuilder cannot be “personally” served, Trojan will use other methods allowed to  
12 serve business entities.

13 Counterdefendant Dreambuilder is a necessary party to this suit in that Trojan is informed  
14 and believes that Dreambuilder at one time owned the Note and sold the Note to Defendant  
15 TRINITY FINANCIAL SERVICES, LLC (“Trinity”), which then for consideration transferred  
16 ownership of the Note to Trojan. Further, Trojan is informed and believes that Dreambuilder  
17 represented to Trinity it had possession and ownership of an original deed of trust and was the  
18 rightful trust deed beneficiary under that deed of trust. Trinity for consideration transferred that  
19 deed of trust to Trojan.

## 20 **II. LEGAL ARGUMENT**

### 21 **A. Statement of the Law**

22 Fed. R. Civ. P. 4(h) provides as follows:

23 **“(h) Serving a Corporation, Partnership, or Association.** Unless federal law  
24 provides otherwise or the defendant's waiver has been filed, a domestic or foreign  
25 corporation, or a partnership or other unincorporated association that is subject to  
26 suit under a common name, must be served:

26 **(1)** in a judicial district of the United States:

27 **(A)** in the manner prescribed by Rule 4(e)(1) for serving an individual; or

28 **(B)** by delivering a copy of the summons and of the complaint to an officer, a  
managing or general agent, or any other agent authorized by appointment or by

1 law to receive service of process and--if the agent is one authorized by statute and  
2 the statute so requires--by also mailing a copy of each to the defendant; or

3 (2) at a place not within any judicial district of the United States, in any manner  
4 prescribed by Rule 4(f) for serving an individual, except personal delivery under  
5 (f)(2)(C)(i)."

6 On April 3, 2017, Trojan's process server appeared at the corporate office of  
7 Dreambuilder, and served an unnamed person who appeared to be a Dreambuilder representative,  
8 but the process server does not appear to have successfully served an *identified*, "officer, a  
9 managing or general agent, or...other agent authorized by appointment or by law to receive  
10 service of process." Federal Rules of Civil Procedure ("FRCP"), Rule 4(h). As to the reference  
11 to FRCP, Rule 4(e)(1) ["...following state law for serving a summons in an action brought in  
12 courts of general jurisdiction in the state where the district court is located or where service is  
13 made"], New York law requires attempts at personal service of a summons on a members of a  
14 limited liability company if management is vested in members, on the manager of the limited  
15 liability company, or on an appointed agent or person authorized to receive process or who is  
16 designated by the company to receive process. NY CPLR § 311-a. It appears there may have been  
17 no proper confirmation by the process server that the person served was authorized by  
18 appointment, designation, or law to receive service of the summons and complaint. Thus, to be  
19 sure, Trojan must serve Dreambuilder in a manner which unquestionably comports with law—  
20 whether by "personal service" or *by another method permitted on business entities*.

21 **B. GOOD CAUSE EXISTS TO EXPAND THE TIME FOR SERVICE OF**  
22 **PROCESS**

23 Fed. R. Civ. P. 4(m) provides that a defendant must be served within 90 days after a  
24 complaint is filed. Because the Counterclaim was filed on March 13, 2017, service must be  
25 accomplished by June 11, 2017. However, the rule further provides that "if the plaintiff shows  
26 good cause for the failure, the court must extend the time for service for an appropriate period."  
27 Similarly N.R.C.P. 4(i) allows the Court to expand the time for service of process upon good  
28 cause shown.

As set forth above, Trojan diligently served Dreambuilder "personally" at its office in  
New York and apparently served a representative but that may be insufficient in these

1 circumstances. This apparent error in service was not discovered until the week of June 5, 2017,  
2 when the process server sent the proof of service to counsel for Trojan and Trojan's counsel had  
3 the opportunity to review it. Service by the process server was confirmed but because a proof of  
4 service was provided late by the process server, Trojan needs to expand time for service for 90  
5 days. For all these reasons, Trojan respectfully requests that this Court enlarge the time allowed  
6 for service of process for 90 days for personal service or another method allowed on business  
7 entities by the States of New York or Nevada.

8 **III. CONCLUSION**

9 For all the above reasons, Trojan respectfully requests that this Honorable Court enlarge  
10 the time allowed for service of process by an appropriate period of 90 days on Dreambuilder, so  
11 service can be effective personally or by other means allowable on entities.

12 Dated: June 9, 2017

BURKE, WILLIAMS & SORENSEN, LLP

14 By: /s/ Richard J. Reynolds

15 Richard J. Reynolds

16 Michael R. Brooks  
17 BROOKS HUBLEY, LLP  
18 1645 Village Center Circle, Suite 60  
19 Law Vegas, NV 89134

20 Attorneys for Defendant and  
21 Counterclaimant TROJAN CAPITAL  
22 INVESTMENTS, LLC and Defendant  
23 TRINITY FINANCIAL SERVICES, LLC  
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1                                   **DECLARATION OF RICHARD REYNOLDS**  
2                                   **IN SUPPORT OF MOTION TO EXPAND TIME FOR SERVICE**

3                   Richard Reynolds, being first duly sworn, deposes and says, that:

4                   1.       That I am a partner and attorney with BURKE, WILLIAMS & SORESENSEN, LLP.  
5 I am duly licensed to practice law in all courts in the States of Nevada, California, and Arizona. I  
6 am an attorney of record for the Defendant and Counterclaimant TROJAN CAPITAL  
7 INVESTMENTS, LLC (“Trojan”) and Defendant TRINITY FINANCIAL SERVICES, LLC  
8 (“Trinity”), in the above-captioned matter.

9                   2.       Trojan filed its Amended Answer to First Amended and Supplemental Complaint  
10 and Counterclaims on March 13, 2017.

11                  3.       All of the Counterdefendants to the action were thereafter served other than  
12 DREAMBUILDER INVESTMENTS LLC (“Dreambuilder”).

13                  4.       To date, although Trojan diligently “served” Dreambuilder, it appears it may not  
14 have done so properly in accord with Federal, New York, or Nevada law. Please see Proof of  
15 Service of Summons on file (Doc. 68). With an expansion of time to serve, Trojan will file an  
16 Amended Proof of Service of Summons. I have attached a true and correct copy of  
17 Dreambuilder’s entity information found on the New York Secretary of State, Division of  
18 Corporations, website as Ex. A.

19                  5.       On April 3, 2017, Trojan’s process server appeared at the corporate office of  
20 Dreambuilder, and served an unnamed person who appeared to be a Dreambuilder representative,  
21 but the process server does not appear to have successfully served an *identified*, “officer, a  
22 managing or general agent, or...other agent authorized by appointment or by law to receive  
23 service of process.” Further, the process server did not appear to serve an *identified* member of  
24 Dreambuilder if management is vested in members, on the manager of Dreambuilder, or on an  
25 appointed agent or person authorized to receive process or who is designated by Dreambuilder to  
26 receive process. To be sure, Trojan must serve Dreambuilder in a manner which unquestionably

27       ///

28       ///

1 comports with law—whether by “personal service” *or by another method permitted on business*  
2 *entities*.

3 6. As set forth above, Trojan diligently served Dreambuilder “personally” at its office  
4 in New York and apparently served a representative, but that may be insufficient in these  
5 circumstances. This apparent error in service was not discovered until the week of June 5, 2017,  
6 when the process server sent the proof of service to counsel for Trojan and Trojan’s counsel had  
7 the opportunity to review it. Service by the process server was confirmed but because a proof of  
8 service was provided late by the process server, Trojan needs to expand time for service for 90  
9 days.

10 7. Trojan respectfully requests that this Honorable Court enlarge the time allowed for  
11 service of process by an appropriate period, ninety days, to allow for “personal service” *or by*  
12 *another method permitted on business entities* by the States of Nevada and New York.

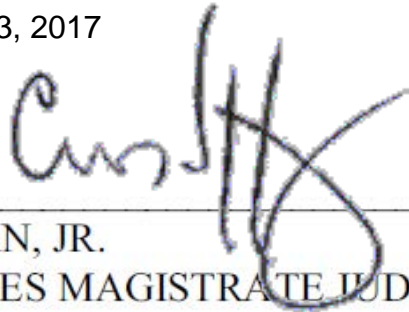
13 I swear under penalty of perjury under the laws of the United States of American that the  
14 foregoing is true and correct.

15 Executed on this 9<sup>th</sup> day of June 2017, at Santa Ana, California.

16  
17  
18 /s/ Richard J. Reynolds  
RICHARD J. REYNOLD, Declarant

19  
20  
21 IT IS SO ORDERED.

22 DATED: June 13, 2017

23  
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25   
26 C.W. HOFFMAN, JR.  
27 UNITED STATES MAGISTRATE JUDGE  
28